S42A Officer's Notes – To Be Tabled

The applicant's evidence resolves or narrows several matters and strengthens the positive-effects case. It does not, however, resolve the decisive RLA6 effects and policy concerns. The applicant's own witnesses accept the material departures; the remaining disagreement is whether retaining the No Build Area, and existing design controls is sufficient to overcome those departures. For the reasons in the s42A report, and particularly the specific direction in Policy 4.4.18(q)(iv), my recommendation remains unchanged.

Consent Triggers

- Mr Woodward and I are in general agreement with respect to the relevant triggers for consent.

- The only caveat is in respect to the breach of sightline standards – which I consider arises as a direct consequence of the proposed subdivision and should, therefore, remain a matter to be considered holistically with this application.

- Also, with respect to the NES-CS, I have reviewed the further information in regard to this within Mr Woodward's evidence and, while the areas of the new RLA6 lots have not been explicitly addressed by the prior PSI/DSI's I do think they provide sufficient information that it can be reasonably concluded that it is unlikely that area is a 'piece of land' for the purposes of the NES-CS. As such, I agree with Mr Woodward's assessment that this application does not trigger any new/additional consents under the NES-CS.

Sightline breach (refer to tabled response to Minute 1)

- The applicant's solution to this issue has been to simply no longer seek consent for any breaches as part of this consent. The issue I have with this is that they do still anticipate that some breaches will be inevitable. Deferring consent for those breaches to future landowners is not, in my opinion, a responsible planning outcome. This is a comprehensive development and the developer will be undertaking substantial earthworks to prepare the platforms etc. Where the proposed subdivision design will necessitate breaches to planning standards, the effects of those breaches are a direct consequence of the subdivision and should, therefore, be properly identified and assessed as part of the subdivision application.

- In this case, I don't consider this matter has been satisfactorily resolved. Should the Panel be minded to grant consent then I consider it would be appropriate for the applicant to first undertake the necessary work to design the lot accessways, identify where they breach, assess the scale and effects of the breaches and propose suitable mitigation. The developer should then construct the accessways as part of the overall development to ensure that any design mitigation is properly undertaken as part of the subdivisional works and the future lot owners don't inherit a deferred non-compliance requiring them to undertake individual ad-hoc consents.

- On this subject I also note that the conditions of consent don't currently require either the construction of individual accessways to lots nor do they include a consent notice advising future landowners of their obligations to construct accessways in accordance with the relevant Council standards, as is CODC's standard practice for rural lifestyle subdivisions.

- Should the Panel be of a mind to grant consent then I recommend such conditions be imposed.

<u>Contention regarding landscape and character effects.</u>

- In Mr Woodward's opinion, I have placed undue emphasis on the proposal's departure from the approved subdivision pattern, rather than considering whether the proposal continues to achieve the environmental outcomes sought by the Plan provisions.

- In his evidence (para 43), Mr Woodward asserts that the landscape outcomes intended for the RuRA(5) are principally achieved by the designated 'No build area'.

- I agree with Mr Woodward that the assessment should focus on the resulting landscape and character outcomes rather than allotment numbers in isolation. However, I do not agree that my assessment treats number of allotments as an end in themselves. The increase from one lot within a discreate area designated as an 'Area for Future Building Platform' to 17 residential allotments with platforms extending right along the lower slopes is relevant because it enables a materially different pattern of dwellings, platforms, curtilage, access, earthworks and domestic activity across RLA6.

- The No Build Area is only one component of the PC14 response to the higher sensitivity within this part of the site. The structure plan also identifies an 'Area for Future Building Platform' and stipulates that the RLA6 remain as a single lot.

- As such, it is fair to say that some domestic development was anticipated in this area but that this was limited to a single lot and built form within the identified future building platform area, not a proliferation of 17 lots and all their associated activity. In my opinion, retaining the No Build Area does not, by itself, demonstrate that the more intensive development now proposed achieves the outcomes that were intended for the RLA6, nor the RuRA(5) more broadly.

- In respect to Character effects, Mr Woodward's position seems, at least in part, to be that the effects are largely internalised and because of this they're acceptable because the overall development will remain largely unaltered when viewed from the surrounding environment. I disagree with this approach.

- I accept that the extent to which a change is visible from the surrounding environment is relevant to landscape and visual effects. Indeed, the landscape experts generally agree that the additional development within RLAs 3 and 4 would be largely absorbed into the consented development pattern when viewed externally. However, that does not establish that the proposal would have no material effect on the character experienced within Shannon Farm itself

- This proposal is different from other resource consenting scenarios where effects may be generally disregarded because they're internalised to the applicant's own site – for example, if an applicant proposes a building centrally on a large rural site and that building is not visible from anywhere beyond the applicant's own property then the visual effects would typically be disregarded.

- This application is very different from that scenario. In this case we're considering changes in character to an entire neighbourhood – a neighbourhood that comprises separately owned residential lots, vested roads, and shared open spaces. As such, internalised effects cannot be isolated to just the applicant themselves and should not be disregarded simply because they're unlikely to be experienced from the surrounding environment.

- PC14 established a comprehensively planned rural-lifestyle environment. Its anticipated character was based on a graduated development pattern, with smaller lots concentrated in the more contained parts of the site and progressively larger or less developed areas towards the foothills. The relevant effect is the extent to which the proposal weakens that differentiation and produces a more intensive and homogeneous pattern and ultimately a different character neighbourhood than what RuRA(5) anticipates.

- It is also relevant that the development has progressed beyond being a concept controlled and experienced solely by the applicant. Earlier stages have been implemented and numerous lots have been sold to third parties. As such, any change to the density and character of this neighbourhood will be directly experienced by these landowners.

- Mr Woodward notes that future purchasers will acquire lots with knowledge of the development as ultimately approved. In my opinion, that ignores the effects on those that have already bought into the development. Furthermore, purchaser's awareness or willingness to live within a particular development does not alter the physical character produced by its subdivision pattern and associated residential activity

- A neighbourhood's character is necessarily experienced primarily from within it. The fact that some of the proposed changes may be difficult to perceive from the surrounding rural environment does not make their internal character effects private or irrelevant. Nor does it determine whether the proposal maintains the graduated rural-lifestyle character specifically established through PC14

<u>Lack of Submissions</u>

- Mr Woodward questions whether the SAL is "highly valued" partly because no opposing submissions raised landscape concerns.

- That is not a convincing evidential basis. The landscape's classification and values is not dependent on the number of submitters. Public participation, or lack of, may be influenced by a wide range of matters including awareness, resources, timing or private circumstances. A lack of submissions is just that and should not be interpreted as having any particular meaning.

- Similarly:
    - support for PC14 was support for the proposal and controls then advanced;
    - it cannot assumed that support carries over to this application which departs from the approved PC14 framework; and

- I understand that sale agreements within developments of this nature may sometimes restrict purchasers from opposing the developer from seeking further resource consents. I cannot confirm whether that applies here, and the Panel may wish to ask the applicant. In any case, this reality reinforces the broader point that no reliable conclusion should ever be drawn from the absence of submissions.

<u>Objectives and Policies</u>

- Mr Woodward and I agree that Objective 4.3.10 and Policy 4.4.18 were introduced through PC14. They relate directly (and only) to RuRA(5) and are ultimately most relevant to this proposal.

- We differ significantly, however, in our assessment of the proposal against those provisions. Having considered the applicant's evidence, my assessment and conclusions outlined in my s42A report remain substantially unchanged. I do not propose to repeat my full s42A assessment, but will summarise the principal reasons for concluding that the proposal is contrary to Policy 4.4.18 and does not achieve Objective 4.3.10 overall.

- I agree with Mr Woodward that policy assessment is not a numerical exercise and that a proposal need not comply with every individual policy provision to avoid being contrary to the Plan as a whole. Policies must be read together and their overall direction understood:

- That does not mean, however, that directly applicable and site-specific provisions can be discounted because the proposal satisfies other, less contentious matters. In this case, the proposal can be serviced, avoids the ONL and retains the approved recreation and open-space framework. Those are relevant points of consistency. They do not resolve the more fundamental conflicts concerning the Structure Plan, allotment pattern, rural character and RLA6

- In my opinion when the key policies are read as a whole they very clearly do not support the proposal at hand. In my s42A report I have assessed the proposal against each element of Policy 4.4.18 and, indeed, there are some elements that are either not directly engaged or which the proposal is consistent with. However, as a whole, the proposal is, in my opinion, very clearly contrary to some of the key elements and to the overall ambit of the policy.

- For a start, Policy 4.4.18 must be read alongside the structure plan in Schedule 19.23 – not just because the policy directs as much but because the structure plan is the key mechanism the Plan uses to implement the policy.

The Structure Plan Outcome

- Objective 4.3.10, Policy 4.4.18 and the Structure Plan in Schedule 19.23 form an integrated planning package. The objective identifies the overall outcome sought for RuRA(5), while the and the Structure Plan give that outcome spatial and operational effect.

- The Structure Plan establishes a graduated rural-lifestyle neighbourhood. Smaller lots are concentrated in the lower and more contained parts of the site, while progressively larger and less intensively developed areas provide openness and transition towards the foothills

- The proposal materially weakens that pattern. In RLA3, 13 of the 16 lots would be below the 4,000m² minimum. In RLA4, 36 of the 47 lots would be below the 8,000m² minimum. This would substantially reduce the intended distinction between RLAs 1 and 2 and the larger-lot character of RLAs 3 and 4.

- The effect is not simply numerical non-compliance. The graduated lot pattern is one of the means by which PC14 sought to implement its intended landscape, character and amenity outcomes. This proposal significantly dilutes the differences between the

RLAs and the balancing effect of the larger RLA 3 and RLA4 lots on the smaller RLA 1&2 lots. The result is a more homogenous neighbourhood that more closely resembles a large lot residential zone than the graduated rural lifestyle development that is anticipated for RuRA(5).

RLA6

- A key element of the structure plan is the retention of the RLA6 as a single allotment.
- In this manner the higher density development is generally contained to the south side of the internal roadways and the hillside on the northside of the roadways is intended to be kept open and relatively free of domestication.
- The PC14 framework did not require RLA6 to remain entirely devoid of development. It anticipated a very low-intensity outcome comprising one substantially open title, with the building opportunity concentrated within the identified "Area for Future Building Platform".
- The No Build Area was only one component of that response. The single-allotment outcome, identified future platform area and specific building and subdivision pathways in Policy 4.4.18(q) also regulate the intensity and distribution of development across the balance of RLA6.
- The proposal would replace that single-allotment outcome with 17 residential allotments - along with all their associated landform modification, driveways, buildings and domestic curtilage into the hillside on the norther side of the internal roadways and extending well beyond the identified future platform area.
- Retaining the No Build Area protects the most sensitive upper slopes. It does not demonstrate that every development pattern below that area maintains the open and natural character, landscape legibility and rural amenity sought for RLA6.
- The proposal therefore does not amount to a minor adjustment to the Structure Plan. It would establish a qualitatively different development pattern across an area deliberately assigned a much more open and transitional role

A full assessment against Policy 4.4.18 is outlined my s42A report. I have summarised the specific elements of the policy that this proposal is in clear friction with below:

Provision	Assessment
a. Requiring subdivision and development to be undertaken in general accordance with the Structure Plan in Schedule 19.23;	**Contrary**. "General accordance" allows some flexibility, but the departures here are fundamental rather than incidental. They include material changes to the density distribution in RLAs 3 and 4, replacement of the single-allotment RLA6 outcome with 17 residential allotments, and multiple platforms outside the identified future platform area. These changes affect the Structure Plan's intended spatial pattern and character
c. Adhering to minimum and average allotment sizes for subdivision;	**Contrary**. 13 of the 16 RLA3 lots would be below the 4,000m^2 minimum and 36 of the 47 RLA4 lots be below the 8,000m^2 minimum.

	RLA6 would no longer be held as one allotment.
d. Ensuring that subdivision is designed to facilitate convenient, safe, efficient and easy access for vehicles, pedestrians and cyclists; facilitate the safe and efficient operation and the economic provision of roading and network utility services; and have regard to the natural landform in RLAs 1-6, including through lot boundaries, roading, landscaping and planting design within public spaces;	**Partly consistent.** I do not consider the proposal fully satisfies the broader design component of clause (d)(iii), as the altered lot pattern in RLA6 and the degree of intensification across RLAs 3 and 4 would weaken the intended relationship between subdivision layout, landform and landscape response. I also note that the sightlines matter has not been satisfactorily resolved.
g. Managing the character and amenity values of the Rural Resource Area (5) and surrounding areas by controlling land use activities, avoiding building within the no build areas shown on the Structure Plan, and avoiding urban forms of subdivision and development;	**Contrary.** The proposal avoids building within the No Build Areas, however, it results in a more urbanised/suburban form of rural lifestyle development than anticipated by the Structure Plan and dilutes the balancing influence of the larger RLA3 & RLA4 lots on RLA1 and RLA2
p. Complementing, rather than competing with, urban areas in the district by providing a focus on rural living activities;	**Inconsistent.** The proposal remains focused on rural living and retains the wider open-space and rural framework. However, the proliferation of lots comparable in size to those enabled in parts of the Large Lot Residential Zone would reduce the intended distinction between RRA(5) and the District's large lot residential zones.
q. Maintaining the open and natural character and legibility of Rural Lifestyle Area 6 by avoiding subdivision and building in the No Build Area; enabling building within the 'Area for Future Building Platform' where well integrated into the landscape; otherwise avoiding building and subdivision unless the specified tests are met; including avoiding adverse effects on open and natural character of the RLA6.	**Contrary.** The proposal would replace the single-allotment outcome anticipated for RLA6 with 17 residential allotments, associated access, building platforms, curtilage areas and future residential activity. Importantly, a number of the proposed building platforms are located outside the identified "Area for Future Building Platform". This would fragment and domesticate an area that the policy framework clearly anticipates will remain substantially open and legibly different from the other RLAs. **The policy provides a strong 'avoid' directive for any further subdivision of the RLA6 except for certain specific circumstances – which do not apply to this subdivision.** While the policy and rule framework do provide an avenue for buildings, including dwellings, outside of the 'Area of Future Building Platform' it does so as a discretionary activity and with a high bar to demonstrate that the legibility and open and natural character of the Rural Lifestyle Area 6 will be maintained. This proposal is clearly inconsistent with this not only because of the scale of additional built form it anticipates, but because specific

	building designs are not proposed and therefore cannot be assessed.

- Objective 4.3.10 is enabling, but it is expressly qualified. It provides for varied rural-living opportunities only where those opportunities are integrated with productive and recreational uses and developed in a way that protects the ONL, maintains SAL values, provides for rural amenity, is appropriately serviced and manages effects on surrounding rural uses.

- The proposal satisfies several of those components: it provides additional rural-living opportunities, can be serviced, retains the productive and recreational framework, avoids the ONL and does not materially worsen reverse-sensitivity effects.

- However, for the reasons outlined above, I do not consider it maintains the SAL values and rural amenity outcomes established through the site-specific Structure Plan. The general enabling component of Objective 4.3.10 should not be relied on while substantially discounting the detailed provisions that determine where and at what intensity development was intended to occur.

- Policy assessment is not a tally of provisions met and not met. Clauses (a), (c) and particularly (q) directly govern the density, spatial structure and development of the areas affected by this application. The conflicts with those provisions go to the central planning outcome established through PC14.

- Accordingly, while I acknowledge there are policy elements which the proposal is consistent with, I remain of the opinion that it is overall contrary to Policy 4.4.18, does not achieve Objective 4.3.10 overall and, when the relevant provisions are considered together and, for the purposes of the second s104D gateway, is contrary to the overall policy direction of the District Plan.

<u>NPS-UD</u>

- My s42A report did not consider the NPS-UD in any detail because, by definition, the subdivision is for rural lifestyle development and not 'urban development' and because I have received direction from CODC on multiple occasions that Cromwell is not a Tier 3 urban environment.

- I note that, if the area of the greater Cromwell Ward is relied on to meet the 10,000-person threshold, then this includes substantial rural land and settlements that are separated from one another by Rural land.

- Should the Panel be of the view that Cromwell does constitute an *urban environment* and that this decision affects that environment then the NPS-UD becomes a relevant matter for consideration. However, even on that assumption, I do not consider the NPS's generally enabling direction is determinative for this application. The NPS must be considered alongside the recently established, District Plan provisions that have aimed to control where and how rural-lifestyle growth is to occur.

- Importantly, PC14 was approved in 2022, after the NPS-UD came into force, and established a deliberately site-specific growth framework for rural lifestyle development. In this context I do not consider the NPS-UD would constitute a changed circumstance that undermines the PC14 outcome.

<u>Economic Evidence</u>

- **"Higher and better use"** That conclusion assumes that the relevant environmental costs are acceptable. It is an economic assessment, and needs to be understood in that context not as a broad conclusion on the proposal. The land is already enabled for rural-lifestyle development; the issue is the appropriate intensity and distribution.

- I accept that the new evidence establishes genuine positive effects through additional housing choice and more intensive use of existing infrastructure. I would now give those effects greater weight than I did in the s42A report. However, that evidence does not alter my assessment of the adverse landscape and rural-character effects, nor does market demand determine whether the proposal accords with the site-specific spatial framework established through PC14

Conditions of Consent

- Mr Woodward has provided a copy of the draft conditions of consent attached to his evidence with some further track changes made by the applicant shown in red – I have read these and note the changes are generally administrative in nature and I raise no concerns with any of those suggested edits.

- At the time that I circulated my s42A report the Council's Development Engineer had not yet completed a revised DC assessment. This has now been completed and should consent be granted then the conditions will also need to be updated to include the revised DC demand.